IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 960 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the civil judge?

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PRAMILABEN MUNILKUMAR PAREKH - Petitioner(s)
Versus
STATE OF GUJARAT & 5 - Respondent(s)

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Appearance :
MR PARESH UPADHYAY for the Petitioner
MS MANISHA L SHAH, A.G.P. For the Respondents

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 10/03/2006

ORAL JUDGMENT

1. Rule. Ms. Manisha L. Shah, learned Assistant Government Pleader waives notice of Rule on behalf of the respondents. With consent of the advocates, petition is heard today.

2. This petition arises in somewhat peculiar circumstances. The petitioner is a widow of deceased Government servant who died on 16.07.2003. The husband of the petitioner retired from Government service in September, 1990. At the time of retirement he was facing criminal case involving charges of corruption. Ultimately the Trial Court by judgment dated 31st March, 1997 rendered in Special Case No. 9/89 convicted the husband of the petitioner and sentenced him to imprisonment till rising of the Court and also fined him to pay Rs. 2500/- (Rupees Two Thousand and Five Hundred only).

3. The husband of the petitioner preferred an appeal against the order passed by the Trial Court being Criminal Appeal No. 455 of 1997, which came to be admitted. By an order passed in Criminal Misc. Application No. 5291 of 1997, this Court was pleased to suspend the order of conviction and sentence passed by the Trial Court.

3.1 It is the case of the petitioner that upon retirement of her husband from the Government service, the Government servant was paid provisional pension which he continued to receive right till his death. Upon death

of the Government servant his widow i.e. the present petitioner applied to the authorities for being paid family pension. Initially, the Collector passed an order dated 12th March, 2004 directing payment of family pension to the petitioner. Subsequently, however the said order was also recalled. That is how the petitioner has approached this Court seeking benefits of family pension on the above factual background.

4. The State Government has filed affidavit-in-reply and opposed the petition. It is stated that the husband of the petitioner was facing conviction on account of which he was not entitled to receive full pension and the petitioner is not entitled to receive Family pension.

5. It is not in dispute that the order of conviction and sentence passed by the Trial Court on 16.07.2003 against the husband of the petitioner has been stayed by this Court in Appeal filed by him. It is not in dispute that throughout the life deceased- Government servant received provisional pension. But the question is should the petitioner receive family pension after his death.

6. Mr. Upadhyay, learned Advocate for the petitioner

submitted that the petitioner has joined herself as heir of deceased-Government servant in the pending criminal appeal filed by him. He rightly, pointed out that the cross appeal filed by the State Government for enhancement of the sentence would become infructuous, since the concerned Government-servant is not alive. Ms. Shah, Learned Assistant Government Pleader submitted that the family pension of the Government-servant was not finalised till he expired and the family therefore, cannot receive full family pension.

7. In peculiar facts and circumstances of the present case I find that the family should receive atleast provisional family pension. Ultimately even if appeal filed by the deceased Government-servant against his conviction is not entertained by this Court, there is serious doubt whether the Government can press the order of conviction and sentence passed against the deceased-Government servant into service to withhold or withdraw any part of the pensionary benefits. However, I do not make any conclusive observations in this regard, since in the facts and circumstances of the present case I find that when conviction and sentence passed against the deceased-Government servant were stayed by this Court,

when the deceased-Government servant throughout his life received provisional pension, and when the petitioner is pursuing the criminal appeal as heir of the deceased-Government servant, atleast till final outcome of such appeal, the family cannot be deprived of benefits of family pension.

8. Learned Advocate for the petitioner is justified in contending that family may be put in a disadvantageous situation after the death of Government servant as compared to what was the situation when he was alive facing a suspended sentence and conviction.

9. In view of the above discussion, I find that the petitioner deserves to be paid family pension, atleast on provisional basis till Criminal Appeal No. 455 of 1997 is disposed of. Learned Assistant Government Pleader had pointed out the instructions issued by the State Government vide Government Resolution dated 23.06.2000 pertaining to question of pension and family pension to Government Servant and their families. Such instructions also envisage payment of provisional family pension. The petition is therefore, disposed of by directing the respondents to release provisional family pension of the

petitioner in accordance with rules. This may be done within a period of two months from the date of receipt of a copy of this order. With these directions, the petition is allowed to the limited extent and disposed of accordingly. Rule is made absolute to the above extent. No order as to costs.

[Akil Kureshi, J.]

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